

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:10cr485
	.	
vs.	.	Alexandria, Virginia
	.	October 10, 2014
JEFFREY ALEXANDER STERLING,	.	9:53 a.m.
	.	
Defendant.	.	
	.	
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TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	JAMES L. TRUMP, AUSA DENNIS M. FITZPATRICK, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and ERIC G. OLSHAN, Deputy Chief Public Integrity Section of the Criminal Division United States Department of Justice 1400 New York Avenue, N.W. Suite 12100 Washington, D.C. 20005
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FOR THE DEFENDANT:	EDWARD B. MAC MAHON, JR., ESQ. Law Office of Edward B. MacMahon, Jr. 107 East Washington Street P.O. Box 25 Middleburg, VA 20118
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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 1 - 25)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 P R O C E E D I N G S

2 (Defendant not present.)

3 THE CLERK: Criminal Case 10-485, United States of
4 America v. Jeffrey Alexander Sterling. Would counsel please
5 note their appearances for the record.

6 MR. TRUMP: Good morning, Your Honor. Jim Trump,
7 Eric Olshan, and Dennis Fitzpatrick for the United States.

8 MR. OLSHAN: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. MAC MAHON: Good morning, Your Honor. Edward
11 MacMahon and Barry Pollack for Mr. Sterling. Mr. Sterling has
12 signed the waiver.

13 THE COURT: I saw the waiver. I know that he's not
14 here.

15 All right, although this matter is captioned as a
16 status hearing, we actually have two motions that have been
17 filed, and I've not received to my knowledge a response from
18 the government as to either of the motions. There's a motion
19 for discovery and a motion to compel.

20 Is someone going to respond to those motions,
21 Mr. Trump?

22 MR. TRUMP: Your Honor, we can address those in
23 writing, and I think we should address those in writing given
24 the issues they raise. For example, the motion for -- to
25 compel discovery, I've discussed with Mr. MacMahon some of the

1 things he's identified in that motion. For example, there's
2 some FBI 302s that are classified that are sitting waiting for
3 him. He has not yet reentered his SCIF, so it's been
4 impossible for the government to provide that information to
5 him.

6 THE COURT: So are you not opposing that particular
7 motion then? If you have the 302s, I would assume you're not
8 opposing that aspect of the motion.

9 MR. TRUMP: No, there are other issues that are
10 raised by the motion. For example, in the motion, Mr. MacMahon
11 claims that he's entitled to certain documents. That misstates
12 *Giglio* law and impeachment information generally.

13 For example, the government's obligation is to
14 provide information. It's not the government's obligation to
15 turn over the files from which that information came, so to the
16 extent that Mr. MacMahon is insisting that he have access to
17 the underlying files, we oppose that, and we would have to
18 litigate that before Your Honor.

19 THE COURT: I'm not sure, maybe I misread his motion.
20 I did not think he wanted the entire file. I think he wanted
21 the verbatim statements that those particular witnesses had
22 made.

23 MR. TRUMP: And again, we would limit his entitlement
24 to some of that information. For example, we provided -- I
25 will speak in hypothetical terms because the files are secret

1 and we can't discuss those in open court, but, for example, if
2 a government witness in, in a context of his employment
3 acknowledged that sometime in 1970, he took home a secret
4 document to work on, first of all, we would question the
5 impeachment value of that information. It doesn't go to
6 truthfulness. It doesn't go to honesty. It says nothing about
7 the witness's ability to answer questions in court.

8 But even if it remotely affected truthfulness, we
9 have other issues: the age of the information, the context in
10 which it was provided, things like that, the probative value
11 versus prejudice, but all that the defense is entitled to is
12 the acknowledgement that during a background information, for
13 example, the witness acknowledged doing that. There's nothing
14 more of any value that would be gained by, by providing a
15 document from a file.

16 So in that context, Judge, we do object to, to much
17 of what Mr. MacMahon is saying in his, in his motion.

18 The 302s are the interviews that were conducted with
19 the three individuals who had provided information about one of
20 the government witnesses. We will also provide defense counsel
21 with contact information for those three individuals. They can
22 contact them. They can read the 302s and come to their own
23 conclusion as to whether there's any impeachment value in what
24 they say.

25 THE COURT: All right.

1 MR. TRUMP: The other point, Judge, is all these
2 witnesses will be before the Court at some point, so to the
3 extent that there is any question about what they have said on
4 prior occasions, they can certainly be voir-dired at some point
5 prior to their testimony.

6 THE COURT: I think the one, the one problem may be,
7 because this case is set to be tried before a jury, as I
8 recall --

9 MR. TRUMP: That's true, Your Honor.

10 THE COURT: -- and because we have this issue of
11 whether or not particular witnesses' testimony might bump into
12 some CIPA problems, it's hard for defense counsel to know where
13 the CIPA problems might lie if they don't know what the witness
14 has said.

15 So I think you're correct that getting a detailed
16 response from the government -- I mean, to the extent you can
17 work things out, that's fine, but to the extent there are still
18 some areas that are not worked out between you-all, then I
19 think getting this in writing would be helpful, all right?

20 MR. TRUMP: And that's what we were going to propose
21 here, Your Honor. In addition to setting a trial date, there
22 are three general areas that we think the Court will need to
23 have a hearing. One is Mr. Risen.

24 THE COURT: Obviously.

25 MR. TRUMP: There will be issues that will come up

1 with respect to him, some of which are noted in the defense
2 motion.

3 The second will be this, the issue of impeachment
4 information, what is admissible, what is not admissible, to
5 what extent is the defense entitled to any additional
6 information from the government.

7 And the third are CIPA issues which may overlap a
8 little bit with the *Giglio* question, but there are some loose
9 ends that have to be tied up in terms of CIPA. For example,
10 there were a few things that are left to be resolved in terms
11 of given the lapse of time between 2011 and now, there may be
12 some witnesses whose cover is different today than they were in
13 2011 and vice versa. So there are a few issues that will have
14 to be tied up in terms of the Court's -- getting some orders
15 from the Court with respect to how those things will be handled
16 at trial.

17 I don't know if there are any new CIPA issues that
18 will come up from the defense in terms of any additional
19 Section 5 notices or anything like that, but those are the
20 three general categories for which some hearing time will be
21 necessary.

22 THE COURT: I would think the Risen matter needs to
23 get addressed as quickly as possible. Are you about ready to
24 start addressing that issue?

25 MR. TRUMP: Well, Your Honor, until we have a trial

1 date, we can't issue a subpoena, and there are new government
2 regulations that we have to go through in terms of the issuance
3 of a subpoena. They are codified at 50.10 of the DOJ
4 regulations, and we are doing our best to go through that
5 process as efficiently and as diligently as possible.

6 I can't speak for Mr. Risen. I can't speak for his
7 attorneys. So their response to any subpoena should a subpoena
8 be issued will obviously be made known to the Court, and then
9 at that point, we can go forward.

10 THE COURT: But, I mean, obviously, the Justice
11 Department has to have been considering whether or not a
12 subpoena would be issued for some period of time. I mean, you
13 don't have a trial date, so technically, you can't issue a
14 subpoena, but the decision as to whether or not a subpoena is
15 going to be issued should not take much time to --

16 MR. TRUMP: And I don't think it will take much time.

17 THE COURT: All right.

18 MR. TRUMP: We have gone through our end of the
19 process. The prosecutor's end of the process is nearly
20 complete. The only additional information we need is a trial
21 date and then --

22 THE COURT: Which you're going to get, yeah.

23 MR. TRUMP: -- it is up to, for example, the new
24 regulations require the director of national intelligence to
25 make a certification with respect to the case and to transmit

1 that to the attorney general. So there is a process that will
2 take some time, but I do not expect it will take very long.

3 THE COURT: Well, why don't you give me a ballpark
4 figure as to how long you think it will be.

5 MR. TRUMP: A few weeks.

6 THE COURT: A few weeks? All right.

7 Have you and defense counsel spoken about a possible
8 trial date given the various hurdles?

9 MR. TRUMP: We've spoken very generally, Your Honor.
10 Our position is that we would like to try the case as soon as
11 the Court's docket would allow us.

12 THE COURT: I could try it next week, so you don't
13 really mean that, Mr. Trump.

14 MR. TRUMP: Well, I think we -- the logistics are
15 that we have between 40 and 50 witnesses. We would not need
16 that many if we can reach stipulation on certain issues, but if
17 we can't, that's roughly the number of witnesses.

18 Maybe half are local. The others are all over the
19 world. So the logistics of making travel arrangements and
20 hotel reservations, things like that, I think we would need
21 about a month to get all that ready, but after that, Judge,
22 we're at your mercy, so to speak, with respect to your calendar
23 and your docket, and we would like to try it as soon as your
24 calendar would allow.

25 THE COURT: And I'm assuming given that number of

1 witnesses and the potential for having CIPA issues that still
2 can pop up in a trial of this sort, five to ten trial days, but
3 no more than that?

4 MR. TRUMP: That's roughly the ballpark from least to
5 most, yes.

6 THE COURT: All right.

7 MR. TRUMP: From our standpoint. We're not speaking
8 for the defense.

9 THE COURT: All right. All right, Mr. MacMahon?

10 MR. MAC MAHON: Thank you, Your Honor.

11 THE COURT: First of all, let me just ask you, do you
12 think five to ten trial days is about right from the way you
13 see things?

14 MR. MAC MAHON: I would think so, Your Honor, from my
15 experience trying cases in your courtroom.

16 THE COURT: All right.

17 MR. MAC MAHON: It may take a little longer but I
18 would say it's more on the outside. With that many witnesses
19 coming and going, it's going to take a while.

20 THE COURT: Assuming you-all don't work some issues
21 out, which I would expect, you know, you'd make a good effort
22 to do if you can.

23 MR. MAC MAHON: We would if it was something we could
24 work out, Your Honor.

25 THE COURT: All right.

1 MR. MAC MAHON: With respect to the *Giglio* matter,
2 Your Honor, Mr. Pollack has been working on all of that, but if
3 the government is going to file a response in writing, we can
4 obviously just defer the argument and the resolution of that
5 matter for a specific hearing date, and the same with respect
6 to Mr. Risen as well.

7 So I guess the question really is you want to know
8 about a trial date.

9 THE COURT: Correct.

10 MR. MAC MAHON: And I guess our concerns now about
11 having it too soon, I know you're not going to give me too
12 long, we were ready to try the case three years ago, when the
13 case got delayed.

14 But Ms. Gunning is here. We're going to go down into
15 the SCIF now and reopen it. We basically have to start over in
16 terms of reorganizing everything that's down there.

17 Mr. Trump and I talked. We actually already have
18 witness lists and exhibit lists that are ready to go, but we
19 still need to refresh our recollections of what's in there and
20 maybe look at some other issues. In the last three years,
21 there have been some other issues that are going to have to be
22 litigated by other national defense issues in this case.
23 Again, I apologize being circumspect, but, you know, that's
24 kind of the way we have to deal with this.

25 I mean, we don't think -- Mr. Pollack and I don't

1 think that really, going into next year, given our other trial
2 schedule, is really the best we can do for the Court and to
3 provide effective assistance to Mr. Sterling, who obviously is
4 entitled to that. I know the Court is very sensitive of that,
5 but we've thought February would be, would be the earliest that
6 we could, could give you a date where we could litigate.

7 I mean, the Risen issue may be more complicated than
8 just a two-week issue with the -- and we think it's going to
9 be -- more than just going to the attorney general and asking
10 what he's going to do, because then we have to find out what
11 Mr. Risen is going to do and then what the Court thinks the
12 legal issues that may arise if, for example, he refuses to
13 testify, and there is some understanding about repercussions if
14 he doesn't.

15 These things are going to be complicated, we believe,
16 and many are of first impression. So there's no -- I don't
17 think there's a rush after three years of appellate litigation
18 to get this done in a way that prejudices Mr. Sterling, so our
19 proposal is February, Your Honor.

20 THE COURT: Mr. Trump?

21 MR. TRUMP: Judge, I've been around for about almost
22 24 years, and I've never made this request, but I can't try
23 this case for personal reasons in February or March.

24 THE COURT: All right.

25 MR. TRUMP: I can explain to the Court what they are

1 if the Court wants to hear, but --

2 THE COURT: You've -- the Court knows you as an
3 officer. If you have that problem, whatever problem it is, I
4 would respect that.

5 I was actually looking at mid-January. I think, I
6 think trying this case -- to set it in 2014 is problematic.
7 First of all, for purposes of the record, I'm making a finding
8 this is a complex case. The Speedy Trial Act clearly, the time
9 periods within that act clearly would not apply to this case
10 because of the significant classified information issues, the
11 complexity with the Risen matter, and I assume there's no
12 objection that the Speedy Trial Act --

13 MR. MAC MAHON: No.

14 THE COURT: I think they were waived before, but I
15 just for the record want to just be --

16 MR. MAC MAHON: It will be waived again, Your Honor.

17 THE COURT: All right. Mr. Trump, you'd agree with
18 that?

19 MR. TRUMP: I agree, Your Honor.

20 THE COURT: Okay. What I don't want to do is set a
21 trial date and have to change it again. That's, that's bad
22 practice.

23 MR. TRUMP: What we were going to suggest, Judge --

24 THE COURT: Yeah.

25 MR. TRUMP: -- is a trial date of the 12th or the

1 13th of January, if we go into January, and then schedule
2 hearings for CIPA and *Giglio* matters in December, in early
3 December.

4 The Risen matter, I think we, we can handle that in
5 December, but I don't want to speak for Mr. Risen's counsel.

6 THE COURT: Do we have any counsel here for Mr. Risen
7 today in the courtroom? Is there anybody?

8 (No response.)

9 THE COURT: No.

10 MR. TRUMP: I don't expect them to be. I had a
11 telephone call with them this week, and I told them that we
12 would be suggesting that we would have a hearing date to
13 discuss those issues, and they asked me that if there is going
14 to be a hearing, to discuss with them possible dates, and I
15 would suggest to the Court that the first two weeks of
16 December, we could have hearing dates for these three general
17 categories, whether they be on the same day or two days or
18 three days, it doesn't really matter to us, but I can call
19 Mr. Risen's counsel and find out what days they're available in
20 December.

21 THE COURT: Actually, I think the Risen matter needs
22 to be pushed up sooner if we're going to keep to a January
23 trial date. I'm available every Friday in November except the
24 Friday after Thanksgiving, we're not holding court that day, so
25 the 28th is out, but any other Friday motions docket, and given

1 the nature of this case, we might even want to not do it on a
2 Friday.

3 But I think the better thing would be for you to get
4 that subpoena out as soon as possible, if you're going to issue
5 the subpoena, and you thought you might be able to do it within
6 two or three weeks, or is this clearing process going to take
7 longer than that?

8 MR. TRUMP: A few weeks. The regulations are brand
9 new. This is the first time anyone at the department is going
10 through them, but we, we hope to have everything wrapped up
11 within a few weeks. I don't --

12 THE COURT: So that's why you're saying December,
13 because you don't think by November you would have gotten the
14 subpoena out and there would have been enough time for the
15 Risen attorneys to file a motion to quash or whatever they're
16 going to file and then you to respond to it. I mean, that's
17 why you're looking at December?

18 MR. TRUMP: That's what I'm thinking, that if, if,
19 for example, all the decisions were made by November 1, I'm
20 sure his attorneys want some time to file whatever they're
21 going to file, and then we could have a hearing in early
22 December, but that was just my gut feeling, Your Honor.

23 I'm certainly willing to contact counsel for
24 Mr. Risen and find out generally what their, their availability
25 would be.

1 THE COURT: Yeah, I think you ought to do that before
2 we set a hearing date. All I'm going to do today is set the
3 trial date, and what I am looking at, I mean, I already have a
4 trial scheduled for January 12, but quite frankly, it's
5 beginning to plead out, so I don't know whether that's going to
6 go forward.

7 Mr. Trump, are you -- do you absolutely disappear or
8 become unavailable as of February 2? In other words, the whole
9 month of February, you're gone or unavailable?

10 MR. TRUMP: Well, my wife is expecting, so --

11 THE COURT: Oh, that's exciting.

12 MR. TRUMP: -- those days are somewhat --

13 THE COURT: Oh, yes. But if we started the trial on
14 Tuesday, January 20 --

15 MR. TRUMP: That really pushes it for me, Your Honor.
16 That's all I can say.

17 THE COURT: That's getting too close to that time
18 period, yeah.

19 MR. TRUMP: But what I was going to suggest, Your
20 Honor, if we, if we start the case on the 12th or 13th, if we
21 have resolved all of the CIPA issues, the *Giglio* issues, the
22 Risen issues well in advance, I was also going to suggest that,
23 for example, because of the screen and all the issues of
24 logistics of the courtroom, that we actually do jury selection
25 a few days before trial so that we have plenty of time to

1 handle all the logistics of setting up the courtroom and
2 everything and we just hit the ground running when trial
3 starts.

4 The reason I suggest that, in the *Torrez* trial before
5 Judge O'Grady, we, we actually did jury selection several weeks
6 before the evidence was heard. We were a little worried how
7 that might affect the jurors and their ability not to do
8 research and things like that, but it actually worked out.

9 THE COURT: We did it with *Moussaoui*, too. There was
10 a break between the selection of the *Moussaoui* jury and the
11 start of that trial, so that's been done before.

12 MR. TRUMP: If we did start trial on January 13, for
13 example, the Wednesday or Thursday before, we could handle all
14 the issues relating to jury selection, and that would give us a
15 full week of trial then, that week and the following, and we
16 might be wrapped up by the 22nd or 23rd.

17 THE COURT: The only problem I have is I have a trial
18 on the 12th, and I'm not, I'm not sure -- it's a
19 multi-defendant case. I'm not sure every defendant will plead
20 out. I've taken two pleas so far.

21 And the week of the 19th, that Monday is a federal
22 holiday.

23 MR. TRUMP: Correct.

24 THE COURT: So that's only a four-day week that week.
25 Well, I think what we could do is I'm going to set

1 the trial to start Wednesday, the 14th of January, and I will,
2 I will conduct trial on that Friday, so we'll get three full
3 trial days that week. That is going to create a three-day
4 break on the long weekend, but then we have -- and again, we
5 can try the case on Friday, the 23rd, so there would be four
6 more days that week, and then by the week of the 26th, I mean,
7 the case could very well, because I try cases, as you know,
8 fairly fast, it might be done.

9 If worst came to worst, though, Mr. Trump, could you
10 arrange your presentation of evidence such that your cocounsel
11 could be working towards the end of the trial?

12 MR. TRUMP: I'm sure cocounsel will be --

13 THE COURT: Will that work on --

14 MR. TRUMP: -- well-versed in the case by that time
15 and can adequately take over.

16 THE COURT: All right. Would that schedule work for
17 the government?

18 MR. TRUMP: That would work for the government.

19 THE COURT: So what we would do then is probably do
20 the jury selection maybe on, like, the 8th, and I'll go with
21 your recommendation that we have the jury in place.

22 If between now and then this case that I have set for
23 the 12th, if the total -- case totally pleads out, I'll let
24 you-all know, and maybe we can push the start date back two
25 days, all right?

1 MR. TRUMP: Okay.

2 THE COURT: Does that, does that work on defense
3 counsel's calendars?

4 MR. MAC MAHON: It does, Your Honor.

5 THE COURT: All right. So what I'm going to do is
6 I'm going to say that the trial actually begins on Thursday,
7 January 8, with the selection of jury, all right? And that
8 would be at 10:00. And then hopefully, we can start the trial
9 on the 12th if I've gotten rid of the other case. If not, I
10 will get rid of the other case in time so that we can start on
11 the 14th.

12 Does that sound all right to everybody?

13 MR. TRUMP: That sounds fine.

14 THE COURT: All right. And then just again, the
15 heads up, right now because we've got that holiday season,
16 there are no dockets scheduled for January 2 or December 26, no
17 formal Friday dockets, and staff is thin those two weeks. Now,
18 I'm not out of the area, so if we have emergency issues that
19 come up, you-all better get me plenty of notice so I have
20 enough staff here to cover, all right?

21 But right now, most problems have to get resolved by
22 December 19 or flip over into the week of January 5, all right?
23 There's going to be that two-week window when it's going to be
24 hard to get much heard, but I will arrange to have it heard if
25 it has to be done, but you've got to just give me enough time.

1 If you, if you file something and expect a hearing in two or
2 three days, it might not happen. I might not have enough staff
3 to do it. Okay?

4 MR. MAC MAHON: I'm going to be on vacation between
5 Christmas and New Year's.

6 THE COURT: Great. So then nothing is going to
7 happen, all right?

8 MR. TRUMP: We'll try to make as much happen during
9 that period of time.

10 THE COURT: Well, it won't happen, Mr. Trump, if
11 Mr. MacMahon can't be here, so -- all right. So --

12 MR. TRUMP: We would suggest that about 30 days for
13 any additional motions.

14 THE COURT: I'll set it -- all right, any additional
15 motions within 30 days of today's date. I would expect -- I
16 think we should do some of the scheduling of motions by a phone
17 conference. You know, we've done that before in this case.

18 MR. MAC MAHON: Sure.

19 THE COURT: That way -- because I think especially
20 with CIPA, I wouldn't do that on a Friday motions docket, so
21 we're going to have to have set dates for that. And then
22 again, coordinating with Mr. Risen's counsel, if we have to
23 have a hearing there, again probably a Friday motions docket is
24 not the ideal time. So we're going to need to do some
25 scheduling along those lines, all right?

1 MR. MAC MAHON: We'll cooperate and get that done.

2 THE COURT: Yeah, I expect you-all to work well on
3 that.

4 MR. TRUMP: Just so the Court is aware, for example,
5 we know that our witness list has changed a little bit because
6 of retirements, things like that. Plus, we had to bring
7 up-to-date review of witness files. We've already done that.
8 The information is secret, so it has to go through a
9 classification process, but we will be getting that -- whatever
10 little additional information there is about witnesses, we'll
11 get to Mr. MacMahon so that to the extent that there is any
12 motions relating to that, such as the one he's already filed,
13 it can all be done at one, at one time.

14 THE COURT: All right, that's fine.

15 All right, we're all set on this then?

16 MR. MAC MAHON: Yes, Your Honor. Thank you.

17 THE COURT: Very good. Thank you.

18 MR. POLLACK: Thank you, Your Honor.

19 MR. OLSHAN: Thank you, Your Honor.

20 MR. TRUMP: Judge?

21 THE COURT: Yes, Mr. Trump.

22 MR. TRUMP: The discovery order is written with
23 respect to days before trial, so it's our position that nothing
24 has to change with respect to the discovery order. I don't
25 anticipate there being any issues, but all the dates in the

1 discovery order are calculated within so many days of trial.

2 THE COURT: Well, again, as I recall, this case was
3 set to start on a Monday, and I think either Thursday or
4 Friday, we had motions and you-all took the appeal and it
5 stopped.

6 MR. TRUMP: Right.

7 THE COURT: So I would think the defense got or had
8 on the eve of the first trial date all of that, and I suspect
9 the problem right now is it hopefully is in the SCIF.
10 Mr. MacMahon, you need to go back over it.

11 But here's my point: The case should be immediately
12 put back to the point it was at when it stopped. So to the
13 extent that the government -- I don't think you have, but if
14 you were to have taken back any of the *Giglio* or Jencks that
15 you had provided at that point, you need to immediately give it
16 back to defense counsel.

17 MR. TRUMP: And we will.

18 THE COURT: Yes.

19 MR. TRUMP: As the Court is aware, as we go through
20 trial prep and witnesses are interviewed, things come up that
21 have to be disclosed, so as that process continues, we will
22 continue to make whatever disclosures that we have to make, and
23 in the three years, things have happened, and so we may have to
24 replace a witness who has retired, for example, with another
25 witness. There may be witnesses that aren't available.

1 THE COURT: Right.

2 MR. TRUMP: So all that will be communicated to
3 defense counsel, and whatever disclosures have to be made will
4 be made promptly.

5 MR. MAC MAHON: And for the record, Your Honor, I
6 don't believe that -- the *Giglio* that we received a couple days
7 before the trial was just in the form of a letter. We didn't
8 get any of the underlying information. Mr. Trump tells me he's
9 about to give me some more, but that's the subject of the
10 motion dealing with the *Giglio* as to whether there's a
11 requirement of more, and that, of course, could lead to CIPA
12 litigation, too.

13 THE COURT: Well, before -- we don't know if there's
14 an issue there or not. Why don't you wait and see what you get
15 first from Mr. Trump, and then we'll see where there is an
16 issue. About Jencks, though, you would have had, given the
17 practice in this court, you should have all the Jencks for the
18 original witnesses who were going to be called.

19 MR. MAC MAHON: I would expect so, Your Honor.

20 THE COURT: Right. And so the only thing that
21 Mr. Trump is saying is that some of that Jencks may be moot at
22 this point because that witness isn't going to be called,
23 either he may have died or just become unable to be a witness,
24 and they may have some new witnesses.

25 I do think that you should, both sides should keep

1 each other apprised of any major changes. In other words,
2 whatever you had previously filed so that everybody was
3 expecting to go to trial on that information, if it has changed
4 and you were obligated to have exchanged it, you need to update
5 that promptly, all right?

6 MR. MAC MAHON: In terms of amending witness list and
7 their exhibit list?

8 THE COURT: That sort of thing.

9 MR. MAC MAHON: We'll work it out.

10 THE COURT: Okay. I expect you-all to work it out.

11 MR. TRUMP: I appreciate that. I don't know if the
12 position of the defense with respect to their expert has
13 changed at all. If it has, then we would expect --

14 MR. MAC MAHON: We've got to go find him, and then --

15 MR. TRUMP: An amended notice.

16 THE COURT: Right, exactly. Exactly.

17 MR. TRUMP: Things like that can be resolved, and if
18 not, then we will file whatever we have to file.

19 THE COURT: I know you will. All right, very good.

20 MR. TRUMP: Thank you.

21 MR. MAC MAHON: Thank you, Judge.

22 (Which were all the proceedings
23 had at this time.)

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CERTIFICATE OF THE REPORTER

I certify that the foregoing is a correct transcript of
the record of proceedings in the above-entitled matter.

/s/

Anneliese J. Thomson